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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY DOMINICI, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

THE HERSHEY COMPANY,
Defendants.

Case No. 2:24-cv-9414

CLASS ACTION

CLASS ACTION COMPLAINT

1. Breach Of Express Warranty
2. Breach Of Implied Warranty
3. Fraud (Affirmative
Misrepresentation, Omission,
And Concealment)
4. Negligent Misrepresentation And
Omission
5. Violation Of Consumer
Protection Law
6. Negligence
7. Unjust Enrichment

JURY TRIAL DEMANDED

1 Plaintiff Anthony Dominici (“Plaintiff”) brings this action on behalf of
2 themselves and all others similarly situated against Defendant, The Hershey Company
3 (“Defendant” or “Hershey”). Plaintiff alleges as follows pursuant to the investigation
4 by their counsel and based upon information and belief.

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this Class action lawsuit on behalf of himself and
7 similarly situated consumers (“Class Members”) who purchased for personal, family,
8 or household use, Defendant’s chocolate or other confectionery products
9 (“Confectionery Products”),¹ which are unfit ordinary purpose because the packaging
10 in which they are wrapped and sold, which is essential and integral to the delivery of
11 the product to Plaintiff and the Class, contain heightened levels of dangerous, unsafe
12 organic fluorine and/or per- and polyfluoroalkyl substances (“PFAS”).

13 2. PFAS are a group of synthetic chemicals which are harmful to both the
14 environment and humans. PFAS persist and accumulate over time, and are harmful
15 even at very low levels. Fluorine is an atomic element present in the molecular
16 structure of PFAS.

17 3. PFAS is known as a “forever chemical” because its synthetic molecular
18 structure is exceedingly strong, such that PFAS do not break down easily. This is
19 particularly problematic toxic and carcinogenic.

20 4. As awareness of carcinogenic PFAS, or “forever chemicals,” has grown,
21 testing to determine the existence and levels of PFAS in consumer products and
22 packaging has become more common. Recent tests have shown the existence of PFAS
23 in the packaging of a number of consumer products.

24
25
26 _____
27 ¹ The Confectionery Products include but are not limited to Hershey Milk Chocolate
28 Bar, Hershey Cookies n’ Cream Bar, Hershey’s Kisses, Reese’s Peanut Butter Cups,
Reese’s Pieces, Almond Joy, Mounds, and KitKat Bar.

1 5. In response to the detection of PFAS in consumer products or their
2 packaging, bans and phase-outs for plastic food and candy packaging have been
3 introduced in multiple U.S. states. Additionally, as of February 2024, the United
4 States Federal Food and Drug Administration, (“FDA”) does not allow the intended
5 use of PFAS in food packaging.

6 6. The Hershey Company is a publicly traded, iconic, multi-brand U.S.
7 confectionery maker with a multi-billion dollar market share of the confectionery
8 segment.

9 7. Notwithstanding the known dangers posed by PFAS and the recent FDA
10 prohibition of PFAS in food packaging, recent independent testing has found
11 heightened levels of PFAS in the wrappers or packaging for Hershey’s Confectionery
12 Products. Testing of the wrappers for Hershey’s Confectionery Products revealed
13 PFAS contamination over 10 mg/kg, and readings as high as 81.5 mg/kg of total
14 fluorine.

15 8. Given the now heightened awareness of PFAS in the industry generally
16 and in food packaging in particular, Hershey is undoubtably aware of the seriousness
17 of PFAS, and is or should be monitoring or correcting the contamination of PFAS in
18 its product wrappers and disallowing use of any contaminated wrappings. This is
19 particularly so in that the PFAS within its wrappers are not necessary, are unsafe and
20 have been banned by the FDA.

21 9. Hershey brands itself as a confectioner selling premium products of the
22 utmost quality, spending extra effort to optimize the value impression of its packaging
23 compared to its competitors. Hershey also touts the quality and safety of its products,
24 including the Confectionery Products’ wrappers, to convey a message to consumers
25 that the Confectionery Products are safe, high-quality, merchantable, and free of any
26 unwanted substances or contamination.

27 10. Yet, as the recent product testing reveals, Hershey’s representations,
28 warranties, statements, and disclosures are false and misleading. Contrary to the

1 foregoing, Hershey omits that the Confectionery Products' wrappers contain
2 dangerous levels of PFAS and/or organic fluorine, and pose a substantial health risk
3 to unsuspecting consumers. Neither before nor at the time of purchase does Hershey
4 notify consumers like Plaintiff that the Confectionery Products are wrapped in unsafe
5 and harmful wrappers that contain heightened levels of organic fluorine and/or PFAS.

6 11. Plaintiff brings this action for economic damages and injunctive relief
7 on behalf of all persons who paid for Hershey's Confectionery Products. Hershey's
8 wrongful conduct constitutes (i) breaches of express and implied warranties, (ii) fraud
9 (affirmative misrepresentation and omission), (iii) negligent misrepresentation, (iv) a
10 violation of the California Unfair Competition Law, Cal. Bus. Prof. Code § 17200, *et*
11 *seq.*, California Consumer Legal Remedies Act, Cal Civ. Code §§ 1750, *et seq.*, and
12 the California False Advertising Law, Cal. Bus. Prof. Code § 17500, *et seq.* (and other
13 states' analogous non-conflicting consumer protection laws), (v) negligence, and (vi)
14 unjust enrichment.

15 12. Accordingly, Plaintiffs bring their claims against Defendant individually
16 and on behalf of a class of all other similarly situated as set forth below.

17 **THE PARTIES**

18 13. Plaintiff Anthony Dominici is a natural person and citizen of California.
19 Plaintiff has purchased the Confectionery Products from Defendant for several years,
20 including as recently as earlier this year when he purchased the Hershey's KitKat bar.
21 Prior to his purchases, Plaintiff had reviewed the labeling, packaging, and marketing
22 materials of the Products, including those set out herein, including that the Products
23 were safe and sustainable. This includes the packaging which directs Plaintiff and
24 other consumers to Defendant's website which in turn, sets forth Defendant's
25 positions that, *inter alia*, it tries to avoid use of dangerous chemicals such as PFAS or
26 fluorine, it goes beyond regulatory safety and quality standards, and that its highest
27 priority is the safety and quality of its products so that consumers can rest assured
28 they can enjoy Hershey's products without any risks. The wrappers for the

1 Confectionery Products purchased by Plaintiff also did not disclose anything about
2 PFAS or fluorine.

3 14. Plaintiff understood that based on Defendant's assertions, that the
4 Confectionery Products were safe for consumption, and otherwise sustainable
5 products. Plaintiff reasonably relied on these representations and warranties in
6 deciding to purchase the Confectionery Products, and these representations and
7 warranties were part of the basis of the bargain in that Plaintiff would not have
8 purchased the Products, or would not have purchased them on the same terms, if the
9 true facts had been known. As a direct result of Defendant's material
10 misrepresentations and omissions, Plaintiff suffered and continues to suffer,
11 economic injuries.

12 15. Plaintiff's purchase and consumption of Confectionery Products has
13 resulted in Plaintiff's suffering physical impact in the form of being exposed to a non-
14 bargained for agent with potent mutagenic properties that operates at the cellular and
15 sub-cellular levels, implicating future potential health consequences.

16 16. Although Plaintiff would not have purchased the Confectionery Products
17 on the same terms had he known about the products' true condition, Plaintiff
18 continues to desire to purchase the Confectionery Products from Defendant in the
19 future. However, Plaintiff is unable to determine if the Products are actually safe and
20 sustainable. Plaintiff understands that the composition and safety levels of the
21 products may change over time. But as long as Defendant continues to market its
22 products as, for example, "safe" and "sustainable," Plaintiff will be unable to evaluate
23 the different prices between Defendant's Confectionery Products and competing
24 products. Plaintiff is further likely to be repeatedly misled by Defendant's conduct,
25 unless and until Defendant is compelled to ensure that the Confectionery Products are
26 marketed, labeled, packaged, and advertised as safe and sustainable, are in fact safe
27 and sustainable. This is in fact possible because the PFAS or fluorine arise from the
28 wrappers for the Confectionery Products, such as that the use of wrappers without

1 these substances may obviate the contamination without requiring a re-design of the
2 confections themselves.

3 17. Defendant The Hershey Company (“Defendant”) is a Delaware
4 corporation with its principal place of business located at 19 East Chocolate Avenue,
5 Hershey, PA 17033.

6 **JURISDICTION AND VENUE**

7 18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
8 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005 (“CAFA”),
9 because this case is a class action where the aggregate claims of all members of the
10 proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there
11 are over 100 members of the putative class, and at least one Plaintiff, as well as most
12 members of the proposed class, are citizens of different states than Defendant.

13 19. This Court has personal jurisdiction over Defendant because
14 Defendant’s principal place of business is located in this District, and at some of the
15 acts and transactions giving rise to this action occurred in this District.

16 20. This Court is the proper venue for this action pursuant to pursuant to 28
17 U.S.C. § 1391 because Defendant’s principal place of business is located in this
18 District and because a substantial part of the events, omissions, and acts giving rise to
19 Plaintiff’s claims herein occurred in this District.

20 **COMMON FACTUAL ALLEGATIONS**

21 21. As noted above, PFAS are a group of synthetic chemicals which are
22 harmful to both the environment and humans. Fluorine is an atomic element present
23 in the molecular structure of PFAS. PFAS is known as a “forever chemical” because
24 its synthetic molecular structure is exceedingly strong, such that PFAS do not break
25 down easily. This is particularly problematic because PFAS are toxic and
26 carcinogenic.

1 22. “PFAS have been shown to have a number of toxicological effects in
2 laboratory studies and have been associated with thyroid disorders, immunotoxic
3 effects, and various cancers in epidemiology studies.”²

4 23. In fact, scientists are studying—and are extremely concerned about—
5 how PFAS affect human health. Consequently, the Centers for Disease Control and
6 Prevention (“CDC”) outline “a host of health effect associated with PFAS exposure,
7 including cancer, liver damage, decreased fertility, and increased risk of asthma and
8 thyroid disease.”³

9 24. As awareness of carcinogenic PFAS, or “forever chemicals,” grows,
10 testing to determine the existence and levels of PFAS in consumer products has
11 become more common. Recent tests have shown the existence of PFAS in the
12 packaging of a number of consumer products. PFAS in higher concentration usually
13 originates from anti-grease and anti-soak coatings used in packaging that serve no
14 direct function for consumers in food wrappers or their contents.

15 25. Using PFAS for food packaging is unnecessary because PFAS-
16 containing (or fluorine-containing) materials does not need to be used in wrappers,
17 nor do wrappers ordinarily need to be extra resistant to grease or water.

18 26. Because PFAS is unnecessary for the products or their packaging, the
19 existence of PFAS in such wrappers is due to a lack of care in production processes
20 or supply chains.

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22
23 ² Nicholas J. Heckert, et al. “Characterization of Per- and Polyfluorinated Alkyl
24 Substances Present in Commercial Anti-fog Products and Their In Vitro Adipogenic
Activity,” Environ. Sci Technol. 2022, 56, 1162-1173, 1162.

25 ³ Harvard T.H. Chan Sch. Of Pub. Health. Health Risks of widely used chemicals
26 may be underestimated (June 27, 2018), [https://www.hsph.harvard.edu/news/hsph-](https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-health-risks-underestimated/)
27 [in-the-news/pfas-health-risks-underestimated/](https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-health-risks-underestimated/) (last visited October 28, 2024).

27. Notably, as noted above, earlier this year the FDA has banned the use of PFAS in wrappers and similar food packaging. Upon information and belief, Hershey has not applied for or been granted authorization to use PFAS in wrappers for Confectionery Products.

28. In spite of the recognized risks and zero-utility of PFAS (or fluorine) containing wrappers, as well as the FDA ban, the wrappers for Hershey's Confectionery Products nonetheless contain alarmingly high levels of PFAS and fluorine.

29. As reported earlier this month, independent third-party testing reported the following for Hershey's Confectionery Products' wrappers:

Confection	PFAS Compounds	Fluorine
Hershey Chocolate Bar	PFOS 17.2 mg/kg Lab_3 (Foil Test)	Florine 17.2 mg/kg Lab3_US
Hershey Cookies n' Cream Bar	PFOA 11.7 mg.kg Lab_3 (Foil Test)	Florine 11.7 Lab3_US
Hershey's Kisses	PFOA 13.5 mg/kg Lab_3 (Foil Test)	
Hershey's Kisses (foil/little white flag):		Florine "High" Lab1_Ger; 15 mg/kg Lab2_Ger; 13.5 mg/kg Lab3_US
Reese's Peanut Butter Cups, paper cups	HFPO-DA 6.9 mg/kg; PFDA 1.2 mg/kg; PFHxS 2.5 mg/kg; PFNA 2.1 mg/kg; PFOA 14.0 mg/kg Lab_3 (other pkg test)	Florine 26.7 mg/kg Lab 3_US
Reese's Peanut Butter Cup (foil)		Florine "High" Lab 1 Ger
Reese's Pieces	HFPO-DA 3.4 mg/kg; PFHxS 2.8 mg/kg; PFNA	Florine 19.5 mg/kg Lab2_Ger; 22.9

	1.2 mg/kg; PFOA 14.1 mg/kg; PFOS 1.4 mg/kg (Foil test)	mg/kg Lab_3 US; 23.4 mg/kg Lab_4 Ch
Almond Joy	PFOA 3.1 mg/kg; PFOS 10.8 mg/kg Lab_3 (Foil Test)	
Almond Joy paper inlay	PFOS 2.9 mg/kg Lab_3 (other pkg test)	
Almond Joy/Mounds		Fluorine: 14.5 mg/kg Lab2_Ger; 13.9 mg/kg Lab3_US; 33.2 mg/kg Lab_4 Ch
KitKat Bar	Not detected (Foil test)	Fluorine 12 mg/kg Lab2_Ger

30. As the third-party testing reported, the significant signal in the data is that many of the products seem highly contaminated, and from a toxicological standpoint Hershey's products seem much worse than testing performed on competing products.

31. Troublingly, none of the above Confectionery Products should have contained any PFAS or fluorine in their wrappers, or the products themselves (due to exposure to the wrappers).

CONCEALMENT AND TOLLING

32. Plaintiff's and Class Members' causes of action accrued not sooner than earlier this month with independent third-party testing revealed the PFAS and fluorine levels associated with the Confectionery Products and their wrappers. Plaintiff and other Class Members exercised reasonable diligence but could not discover the PFAS or fluorine contamination or Defendant's wrongful conduct, because Hershey's

1 wrongful acts were concealed from Plaintiff and the public, and facts pertinent to
2 same were within Hershey's possession and control.

3 33. Alternatively, any statute of limitation or prescriptive period is equitably
4 tolled because of fraudulent concealment. Defendant affirmatively concealed from
5 Plaintiff and other Class Members its unlawful conduct. Defendant affirmatively
6 strove to avoid disclosing its knowledge of its wrongful conduct, and of the fact that
7 PFAS or fluorine was used and present in the Confectionery Products or their
8 wrappers.

9 34. To the contrary, Defendant continued to represent and warrant that the
10 Confectionery Products were safe, high quality, merchantable, and did not contain
11 any dangerous undisclosed substances in the products themselves or their wrappers.

12 35. Because of this, Plaintiff and other Class Members did not discover, nor
13 could they have discovered through reasonable and ordinary diligence, Defendant's
14 deceptive, fraudulent, and unlawful conduct alleged herein. Defendant's false and
15 misleading explanations, or obfuscations, lulled Plaintiff and Class Members into
16 believing that the prices paid for Defendant's Confectionery Products were
17 appropriate despite their exercise of reasonable and ordinary diligence.

18 36. As a result of Defendant's affirmative and other acts of concealment, any
19 applicable statute of limitations affecting the rights of Plaintiff and other Class
20 Members has been tolled. Plaintiff and other Class Members exercised reasonable
21 diligence by, among other things, promptly investigating and bringing the allegations
22 contained herein. Despite these or other efforts, Plaintiff were unable to discover, and
23 could not have discovered, the unlawful conduct alleged herein at the time it occurred
24 or at an earlier time so as to enable any complaint to be filed sooner.

25 **CLASS ACTION ALLEGATIONS**

26 37. Plaintiff brings this action both individually and as a class action
27 pursuant to Fed R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) against Defendant on
28 Plaintiff's own behalf and on behalf of the Class(es) defined below, to the extent

1 class members from these jurisdictions can be grouped together for purposes of class
2 treatment:

3 All individuals and entities in the United States and its
4 territories and possessions who, within the applicable
5 limitation periods to the present, paid any amount of
6 money for Confectionery Products (intended for personal,
7 family, or household use).

8
9 38. Plaintiff also alleges the following Subclasses:

10 The California Subclass: All individuals and entities in
11 California who, within the applicable limitation periods to
12 the present, paid any amount of money for Confectionery
13 Products (intended for personal, family, or household use).

14
15 The Pennsylvania UTPCPL Subclass: All individuals and
16 entities in the United States and its territories and
17 possessions who, within the applicable limitation periods to
18 the present, paid any amount of money for Confectionery
19 Products (intended for personal, family, or household use).

20
21 The Injunctive Relief Subclass: All individuals and entities
22 in the United States and its territories and possessions who,
23 within the applicable limitation periods to the present, paid
24 any amount of money for Confectionery Products (intended
25 for personal, family, or household use), and desire to
26 purchase Confectionery Products in the future provided the
27 products or their wrappers do not contain PFAS and/or
28 fluorine.

1 39. Excluded from the Class(es) are: (a) any judge or magistrate presiding
2 over this action, and members of their families; (b) Defendant and its employees,
3 officers, directors, and agents; (c) Defendant's legal representatives, assigns, and
4 successors; and (d) all persons who properly execute and file a timely request for
5 exclusion from any Court-approved class.

6 40. Plaintiff reserves the right to narrow or expand the foregoing class
7 definitions, or to create or modify subclasses as the Court deems necessary.

8 41. Plaintiff meets the prerequisites of Rule 23(a) to bring this action on
9 behalf of the Class(es).

10 42. **Numerosity:** While the exact number of class members cannot be
11 determined without discovery, they are believed to consist of potentially millions of
12 consumers nationwide. The Class(es) are therefore so numerous that joinder of all
13 members is impracticable.

14 43. **Commonality:** Common questions of law and fact exist as to all class
15 members, including, but not limited to:

- 16 a. Whether Defendant made express or implied warranties to Plaintiff
17 and other class members regarding its Confectionery Products;
18 b. Whether Defendant's Confectionery Products or their wrappers
19 contained undisclosed PFAS and/or fluorine impurities and the
20 levels of such impurities;
21 c. Whether Defendant violated standards relating to the manufacture or
22 testing of its Confectionery Products;
23 d. Whether Defendant falsely claimed that its Confectionery Products
24 were merchantable, fit for intended purposes, and otherwise of the
25 quality and composition represented;
26
27
28

- e. Whether Defendant affirmatively or negligently misrepresented or omitted facts regarding its manufacture, sale, or testing of its Confectionery Products;
- f. Whether Plaintiff and other class members have been economically, or are at greater risk of bodily injury in the future, as a result of Defendant's unlawful conduct, and the amount of their damages;
- g. Whether a common damages model can calculate damages on a class-wide basis;
- h. When Plaintiff's and other class members' causes of action accrued;
- i. The scope of injunctive relief; and
- j. Whether Defendant fraudulently concealed Plaintiff's and other class members' causes of action.

44. **Typicality:** Plaintiff's claims are typical of other class members' claims. Plaintiff and other class members all suffered the same type of economic harm. Plaintiff has substantially the same interest in this matter as all other class members, and their claims arise out of the same set of facts and conduct as the claims of all other class members.

45. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and has retained competent counsel experienced in pharmaceutical litigation, consumer fraud litigation, class actions, and federal court litigation. Accordingly, Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests of other class members. Plaintiff's claims are coincident with, and not antagonistic to, those of the other class members they seek to represent. Plaintiff has no disabling conflict with other class members and will fairly and adequately represent the interests of class members.

46. The elements of Rule 23(b)(2) are met. Defendant has acted on grounds that apply generally to all class members so that preliminary and/or final injunctive

1 relief and corresponding declaratory relief are appropriate respecting the Class(es)
2 as a whole given the cohesiveness of same.

3 47. The requirements of Rule 23(b)(3) are met. The common questions of
4 law and fact enumerated above predominate over the questions affecting only
5 individual class members, and a class action is the superior method for fair and
6 efficient adjudication of the controversy. Although many other class members have
7 claims against Defendant, the likelihood that individual class members will
8 prosecute separate actions is remote due to the time and expense necessary to
9 conduct such litigation. Serial adjudication in numerous venues would not be
10 efficient, timely, or proper. Judicial resources would be unnecessarily depleted by
11 resolution of individual claims. Joinder on an individual basis of thousands of
12 claimants in one suit would be impractical or impossible. In addition, individualized
13 rulings and judgments could result in inconsistent relief for similarly situated
14 plaintiffs. Plaintiff's counsel, highly experienced in pharmaceutical litigation,
15 consumer fraud litigation, class actions, and federal court litigation, foresee little
16 difficulty in the management of this case as a class action.

17 **CAUSES OF ACTION**

18 **COUNT I - BREACH OF EXPRESS WARRANTY AGAINST DEFENDANT**

19 48. Plaintiff alleges this claim for relief on behalf of themselves and all
20 similarly situated class members, both those in California and those in other states the
21 laws of which do not conflict with California law.

22 49. Plaintiff incorporates the allegations in the above paragraphs as though
23 fully set forth herein.

24 50. Plaintiff and each other class member as set forth in this subsection
25 formed a contract with Defendant at the time they purchased Confectionery Products.
26 The terms of the contract included the promises and affirmations of fact made by
27 Defendant on the Confectionery Products' packaging and through marketing and
28 advertising, including that the products would be of the quality and character as

1 represented. This labeling, marketing, and advertising constitute express warranties
2 and became part of the basis of the bargain and are part of the standardized contract
3 between class members and Defendant.

4 51. Defendant expressly warranted that its Confectionery Products were fit
5 for ordinary use, were safe for their intended use, and did not contain any undisclosed
6 impurities, substances, or risks.

7 52. Defendant sold Confectionery Products that it expressly warranted were
8 manufactured and tested properly and did not contain any undisclosed impurities,
9 substances, or risks. This includes statements in the product labeling and packaging,
10 as referenced therein, that described the product as safe without disclosing the
11 presence or levels of PFAS or fluorine.

12 53. Defendant's Confectionery Products did not conform to its express
13 representations and warranties because the product was not manufactured, tested, or
14 marketed properly to account for undisclosed impurities, substances, or risks. At all
15 times relevant times, California and all other states had codified and adopted the
16 provisions of the Uniform Commercial Code governing the warranty of
17 merchantability and fitness for ordinary purpose.

18 54. At the time Defendant marketed and sold its Confectionery Products,
19 Defendant recognized the purposes for which the products would be used and
20 expressly warranted the products were manufactured properly, tested properly, and
21 did not contain any undisclosed impurities, substances, or risks. These affirmative
22 representations became part of the basis of the bargain in every purchase by Plaintiff
23 and every other class member.

24 55. Defendant breached its express warranties with respect to its
25 Confectionery Products as they were not of merchantable quality, were not fit for their
26 ordinary purpose, and contained undisclosed impurities, substances, or risks..

27 56. Plaintiff and each other class member would not have purchased the
28 Confectionery Shampoo Products had they known these drugs contained undisclosed

1 impurities, or that the products did not have the represented safety profile. Or,
2 alternatively, Plaintiff and each other class member would have paid less for the
3 Confectionery Products. In the further alternative, Plaintiff and each other class
4 member would purchase the Confectionery Products in the future provided the PFAS
5 and/or fluorine is eliminated from the products or their wrappers.

6 57. Direct privity exists between Defendant and Plaintiff and each other
7 class member. Alternatively, direct privity is not required between Defendant and
8 Plaintiff and each other class member because, among other things, Defendant is a
9 manufacturer and made direct statements about the safety of its products and intended
10 its statements and affirmations to flow to Plaintiff and to each other class member.

11 58. As a direct and proximate result of Defendant's breach of warranty,
12 Plaintiff and each other class member have been injured and suffered damages in the
13 amount of the purchase price of their medications, the purchase price of any
14 replacement medications, and any consequential damages resulting from the
15 purchases, in that the Confectionery Products they purchased were so inherently
16 flawed, unfit, or unmerchantable as to have no market value.

17 59. Although Plaintiff does not seek to recover for physical injuries,
18 Defendant's Confectionery Products carried undisclosed risks and resulted in physical
19 impact to Plaintiff and other class members, including unbargained for, undisclosed
20 sub-cellular or structural impact on Plaintiff's and each other class member's bodies.

21 60. Pre-suit notice is not required, but even if it is, such notice was provided
22 to Defendant.

23 **COUNT II - BREACH OF IMPLIED WARRANTY AGAINST DEFENDANT**

24 61. Plaintiff alleges this claim for relief on behalf of themselves and all
25 similarly situated class members, both those in California and those in other states,
26 the laws of which do not conflict with California law.

27 62. Plaintiff incorporates the allegations in above paragraphs as though fully
28 set forth herein.

1 63. Plaintiff and each other class member formed a contract with Defendant
2 at the time they purchased the Confectionery Products. The terms of the contract
3 include the promises and affirmations of fact made by Defendant on the
4 Confectionery Products' packaging and through marketing and advertising, including
5 that the product would be of the quality and character as represented. This labeling,
6 marketing, and advertising constitute express warranties and became part of the basis
7 of the bargain and are part of the standardized contract between class members and
8 Defendant.

9 64. Defendant impliedly warranted that its Confectionery Products were fit
10 for ordinary use, were safe for intended use, and did not contain any undisclosed
11 impurities, substances, or risks. This includes statements in the product labeling and
12 packaging, as referenced therein, that described the product as safe without disclosing
13 the presence or levels of PFAS or fluorine.

14 65. At the time Defendant marketed and sold its Confectionery Products,
15 Defendant recognized the purposes for which the products would be used and
16 impliedly warranted the products were manufactured properly, tested properly, and
17 did not contain any undisclosed impurities, substances, or risks. These affirmative
18 representations became part of the basis of the bargain in every purchase by Plaintiff
19 and every other class member.

20 66. At all times relevant times, California and all other states had codified
21 and adopted the provisions of the Uniform Commercial Code governing the
22 warranty of merchantability and fitness for ordinary purpose.

23 67. Defendant was a merchant within the meaning of the above statute.

24 68. Defendant's Confectionery Products constituted goods or products
25 within the meaning of the products to which implied warranty attaches.

26 69. Defendant was obligated to provide Plaintiff and each other class
27 member as set forth in this subsection reasonably fit Confectionery Products for the
28 purpose for which the product was sold and to conform to the standards of the trade

1 in which Defendant is involved such that the product was of fit and merchantability
2 quality.

3 70. Defendant knew or should have known that its Confectionery Products
4 were being manufactured and sold for the intended purpose and impliedly warranted
5 that its Confectionery Products were of merchantable quality and fit for that
6 purpose.

7 71. Defendant breached its implied warranty because its Confectionery
8 Products were not of merchantable quality, nor fit for the product's ordinary
9 purpose, and did not conform to the standards generally applicable to such goods.

10 72. Plaintiff and each other class member would not have purchased the
11 Confectionery Products had they known these products carried undisclosed risks, or,
12 alternatively, would not have purchased them on the same terms (e.g., purchased
13 them for substantially less). In the further alternative, Plaintiff and each other class
14 member would purchase the Confectionery Products in the future provided the
15 PFAS and/or fluorine is eliminated from the products or their wrappers.

16 73. To the extent applicable, direct privity is not required between
17 Defendant and Plaintiff or other class members because, among other things,
18 Defendant is a manufacturer and made direct statements about the safety of its
19 products and intended its statements and affirmations to flow to Plaintiff and other
20 class members. Further, Plaintiff and each other class member were intended third-
21 party beneficiaries to the extent Defendant made any warranty or representation to a
22 reseller who in turn resold Confectionery Products to consumers.

23 74. As a direct and proximate result of Defendant's breach of warranty,
24 Plaintiff and each other class member have been injured and suffered damages in the
25 amount of the purchase price of the Confectionery Products, in that the
26 Confectionery Products they purchased were so inherently flawed, unfit, or
27 unmerchantable as to have no market value.

1 75. Although Plaintiff does not seek to recover for physical injuries,
2 Defendant's Confectionery Products carried undisclosed risks and resulted in
3 physical impact to Plaintiff and other class members, including unbargained for,
4 undisclosed sub-cellular or structural impact on Plaintiff's and each other class
5 member's bodies.

6 76. Pre-suit notice is not required, but even if it is, such notice was
7 provided to each Defendant.

8 **COUNT III - FRAUD (AFFIRMATIVE MISREPRESENTATION,**
9 **OMISSION, AND CONCEALMENT) AGAINST DEFENDANT**

10 77. Plaintiff alleges this claim for relief on behalf of themselves and of all
11 similarly situated class members, both those in California and those in other states,
12 the laws of which do not conflict with California law.

13 78. Plaintiff incorporates the allegations in above paragraphs as though fully
14 set forth herein.

15 79. Defendant affirmatively misrepresented material facts including, inter
16 alia, that its Confectionery Products were not manufactured properly, were not tested
17 properly, and contained any undisclosed impurities, substances, or risks.

18 80. Defendant omitted material facts including, inter alia, that its
19 Confectionery Products were not manufactured properly, were not tested properly,
20 and contained any undisclosed impurities, substances, or risks. This includes
21 statements in the product labeling and packaging, as referenced therein, that described
22 the product as safe without disclosing the presence or levels of PFAS or fluorine.
23 Defendant's action had the effect of fraudulently inducing customers to pay in whole
24 or in part for Defendant's Confectionery Products – products which it knew or should
25 have known did not comply with the applicable standards and contained undisclosed
26 PFAS or fluorine impurities.

27 81. Plaintiff and each other class member would not have purchased the
28 Confectionery Products had they known these products contained undisclosed impurities

1 or that the products did not have the represented safety and quality profile. Or,
2 alternatively, Plaintiff and each other class member would have paid less for the
3 Confectionery Products. In the further alternative, Plaintiff and each other class
4 member would purchase the Confectionery Products in the future provided the PFAS
5 and/or fluorine is eliminated from the products or their wrappers.

6 82. Defendant knew, or reasonably should have known, that its
7 misrepresentations were materially false or misleading or that the omission of material
8 facts rendered such misrepresentations false or misleading.

9 83. Defendant also knew, or had reason to know, that its misrepresentations
10 and omissions would induce the Class(es) to pay for some or all of the cost of its
11 Confectionery Products.

12 84. Defendant's misrepresentations and omissions were material.

13 85. Defendant actively concealed its misrepresentations and omissions from
14 the Class(es), government regulators, and the public.

15 86. To the extent applicable, Defendant intended its misrepresentations and
16 omissions to induce Plaintiff, and each other class member as set forth in this sub-
17 section, to pay for its Confectionery Products.

18 87. But for these misrepresentations and omissions, Plaintiff and each other
19 class member as set forth in this sub-section, would not have paid for Defendant's
20 Confectionery Products. Or, alternatively, Plaintiff and each other class member
21 would have paid less for the Confectionery Products. In the further alternative,
22 Plaintiff and each other class member would purchase the Confectionery Products in
23 the future provided the PFAS and/or fluorine is eliminated from the products or their
24 wrappers.

25 88. Defendant's conduct alleged herein demonstrates its intent to deceive
26 Plaintiff and other class members. Defendant, inter alia, intentionally omitted material
27 facts and made affirmative misrepresentations described herein about the
28 Confectionery Products which it knew were false or inaccurate.

1 89. To the extent applicable, Plaintiff and each other class member as set
2 forth in this sub-section, were justified in relying on Defendant's misrepresentations
3 and omissions. The same or substantively identical misrepresentations and omissions
4 were communicated to each Class(es) member, including through product labeling or
5 other statements by Defendant. No reasonable consumer would have paid what they
6 did for Defendant's Confectionery Products but for its unlawful conduct. To the extent
7 applicable, reliance may be presumed in these circumstances.

8 90. Although Plaintiff does not seek to recover for physical injuries,
9 Defendant's Confectionery carried undisclosed risks and resulted in physical impact
10 to Plaintiff and other class members, including unbargained for, undisclosed sub-
11 cellular or structural impact on Plaintiff's and each other class member's body.

12 91. Plaintiff and each other class member as set forth in this sub-section were
13 damaged by reason of Defendant's misrepresentations and omissions alleged herein.

14 **COUNT IV - NEGLIGENT MISREPRESENTATION AND OMISSION**

15 92. Plaintiff alleges this claim for relief on behalf of themselves and all
16 similarly situated class members, both those in California and those in other states,
17 the laws of which do not conflict with California law.

18 93. Plaintiff incorporates the allegations in above paragraphs as though fully
19 set forth herein.

20 94. Defendant had or undertook a duty to accurately and truthfully represent
21 the quality, nature, and characteristics of its Confectionery Products.

22 95. Defendant failed to exercise ordinary care in making or representing
23 statements (or in failing to disclose facts) concerning the quality, nature, and
24 characteristics of its Confectionery Products.

25 96. Defendant negligently misrepresented or omitted facts regarding the
26 quality, nature, and characteristics of its Confectionery Products. This includes
27 statements in the product labeling and packaging, as referenced therein, that described
28 the product as safe without disclosing the presence or levels of PFAS or fluorine.

1 Defendant's action had the effect of fraudulently inducing customers to pay in whole
2 or in part for Defendant's Confectionery Products – products which it knew or should
3 have known did not comply with the applicable standards and contained undisclosed
4 impurities.

5 97. Defendant knew, or reasonably should have known, that its
6 representations alleged herein were materially false or misleading or that the omission
7 of material facts rendered such representations false or misleading. Defendant also
8 knew, or had reason to know, that its misrepresentations and omissions would induce
9 Plaintiff and each other class member as set forth in this sub-section, to make
10 purchases of Defendant's Confectionery Products.

11 98. As a direct and proximate result of Defendant's acts and omissions
12 described herein, Plaintiff and each other class member as set forth in this sub-section
13 have suffered harm and will continue to do so.

14 99. Defendant's misrepresentations or omissions were material and a
15 substantial factor in Plaintiff's and other class members' paying for Confectionery
16 Products.

17 100. Defendant intended its misrepresentations or omissions to induce
18 Plaintiff and each other class member as set forth in this sub-section to make
19 purchases of Confectionery Products, or had reckless disregard for same.

20 101. But for these misrepresentations (or omissions), Plaintiff and each other
21 class member as set forth in this sub-section would not have made purchases of
22 Defendant's Confectionery Products. Or, alternatively Plaintiff and each other class
23 member would have paid less for Confectionery Products.

24 102. Defendant's conduct alleged herein demonstrates its intent to deceive
25 Plaintiff and other class members. Defendant, inter alia, intentionally omitted material
26 facts and made affirmative misrepresentations described herein about the
27 Confectionery Products which it knew were false or inaccurate.

28

1 103. Plaintiff and each other class member as set forth in this sub-section were
2 justified in relying on Defendant's misrepresentations or omissions. The same or
3 substantively identical misrepresentations were communicated, and/or the same or
4 substantively identical omissions were not communicated to each purchaser.

5 104. Defendant owed a special duty to Plaintiff and each other class member
6 on account of the special relationship that existed between Defendant, as a seller of a
7 product to be ingested. On account of the known or knowable application and use of
8 the Confectionery Products, and Defendant's superior knowledge and position as
9 manufacturer, distributor, and seller of the Confectionery Products, Defendant had a
10 special duty to disclose risks to consumers such as Plaintiff and other class members.

11 105. Although Plaintiff does not seek to recover for physical injuries,
12 Defendant's Confectionery Products carried undisclosed risks and resulted in physical
13 impact to Plaintiff and other class members, including unbargained for, undisclosed
14 sub-cellular or structural impact on Plaintiff's and each other class member's body.

15 106. Plaintiff and each other class member as set forth in this sub-section were
16 damaged by reason of Defendant's misrepresentation or omissions alleged herein.

17 **COUNT V - VIOLATION OF CONSUMER PROTECTION LAW**

18 107. Plaintiff alleges this claim for relief on behalf of themselves and all
19 similarly situated class members, including the Pennsylvania Subclass, the California
20 Subclass, and others in states whose laws do not conflict with California or
21 Pennsylvania law.

22 108. Plaintiff incorporates the allegations in above paragraphs as though fully
23 set forth herein.

24 109. Defendant has violated the consumer protection statutes as follows:

- 25 a. Defendant engaged in unfair competition or unfair or deceptive acts
26 or practices in violation of Ala. Code § 8-19-1, et seq.;
- 27 b. Defendant engaged in unfair competition or unfair or deceptive acts
28 or practices in violation of Alaska Stat. § 45.50.471, et seq.;

- c. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Arizona Rev. Stat. § 44-1522, et seq.;
- d. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4-88-101, et seq.;
- e. Defendant violated the California Unfair Competition Law by engaging in unfair or deceptive acts or practices in violation of Cal. Bus. Prof. Code § 17200, et seq.;
- f. Defendant violated the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq.;⁴
- g. Defendant violated the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq.;
- h. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6-1-105, et seq.;
- i. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b, et seq.;
- j. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, et seq.;
- k. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28-3901, et seq.;
- l. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201, et seq.;
- m. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. State 10-1-392, et seq.;

⁴ Plaintiff only seeks injunctive relief at this time and has served a presuit notice and demand letter, and will amend the complaint after the statutory period to seek other damages under the CLRA as appropriate.

- n. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, et seq.;
- o. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48-601, et seq.;
- p. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation 815 ILCS 505/1, et seq.;
- q. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24-5-0.5.1, et seq.;
- r. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code Ann. § 714H, et seq.;
- s. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50-623, et seq.;
- t. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, et seq.;
- u. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, et seq.;
- v. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 207, et seq.;
- w. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13-101, et seq.;
- x. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, et seq.;
- y. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, et seq.;
- z. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, et seq.;
- aa. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75-24-1, et seq.;

1 bb. Defendant engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of Mo. Rev. Stat. § 407.0 10, et seq.;

3 cc. Defendant engaged in unfair competition or unfair or deceptive acts
4 or practices in violation of Mont. Code § 30-14-101, et seq.;

5 dd. Defendant engaged in unfair competition or unfair or deceptive acts
6 or practices in violation of Neb. Rev. Stat. § 59-1601, et seq.;

7 ee. Defendant engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of Nev. Rev. Stat. § 598.0903, et seq.;

9 ff. Defendant engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of N.H. Rev. Stat. § 358-A:1, et seq.;

11 gg. Defendant engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of N.J. Stat. Ann. § 56:8-1, et seq.;

13 hh. Defendant engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of N.M. Stat. Ann. § 57-12-1, et seq.;

15 ii. Defendant engaged in unfair competition or unfair or deceptive acts
16 or practices in violation of N.Y. Gen. Bus. Law § 349, et seq.;

17 jj. Defendant engaged in unfair competition or unfair or deceptive acts
18 or practices in violation of N.C. Gen. Stat. § 75-1.1, et seq.;

19 kk. Defendant engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of N.D. Cent. Code § 51-15-01, et seq.;

21 ll. Defendant engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of Ohio Rev. Stat. § 1345.01, et seq.

23 mm. Defendant engaged in unfair competition or unfair or deceptive
24 acts or practices in violation of Okla. Stat. tit. 15 § 751, et seq.;

25 nn. Defendant engaged in unfair competition or unfair or deceptive acts
26 or practices in violation of Or. Rev. Stat. § 646.605, et seq.;

27 oo. Defendant engaged in unfair competition or unfair or deceptive acts
28 or practices in violation of 73 Pa. Stat. § 201-1, et seq.;

1 pp. Defendant engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of R.I. Gen. Laws § 6-13.1-1, et seq.;

3 qq. Defendant engaged in unfair competition or unfair or deceptive acts
4 or practices in violation of S.C. Code Laws § 39-5-10, et seq.;

5 rr. Defendant engaged in unfair competition or unfair or deceptive acts
6 or practices in violation of S.D. Code Laws § 37-24-1, et seq.;

7 ss. Defendant engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of Tenn. Code § 47-18-101, et seq.;

9 tt. Defendant engaged in unfair competition or unfair or deceptive acts
10 or practices in violation of Tex. Bus. & Com. Code § 17.41, et seq.;

11 uu. Defendant engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of Utah Code Ann. § 13-11-1, et seq.;

13 vv. Defendant engaged in unfair competition or unfair or deceptive acts
14 or practices in violation of Vt. Stat. Ann. Tit. 9, § 2451, et seq.;

15 ww. Defendant engaged in unfair competition or unfair or deceptive
16 acts or practices in violation of Va. Code § 59.1-196, et seq.;

17 xx. Defendant engaged in unfair competition or unfair or deceptive acts
18 or practices in violation of Wash. Rev. Code § 19.86.010, et seq.;

19 yy. Defendant engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of W. Va. Code § 46A-6-101, et seq.;

21 zz. Defendant engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of Wis. Stat. § 100.20, et seq.;

23 aaa. Defendant engaged in unfair competition or unfair or deceptive
24 acts or practices in violation of Wyo. Stat. § 40-12-100, et seq.; and

25 bbb. Defendant engaged in unfair competition or unfair or deceptive
26 acts or practices in violation of 23 L.P.R.A. § 1001, et seq., the
27 applicable statute for the Commonwealth of Puerto Rico.
28

1 110. Defendant's conduct constitutes trade or commerce or other actionable
2 activity within the meaning of the above statutes.

3 111. Defendant, directly or through its agents, employees, and/or subsidiaries,
4 violated the state statutes by knowingly and intentionally misrepresenting, omitting,
5 concealing, and failing to disclose material facts on the labels for its Confectionery
6 Products, including that: such products were inherently defective, unreasonably
7 dangerous, not fit to be used for their intended purpose, and/or contained levels of
8 PFAS or fluorine that rendered them unsafe and unfit.

9 112. Specifically, by knowingly and intentionally misrepresenting, omitting,
10 concealing, and failing to disclose material facts regarding the Confectionery
11 Products, as detailed above, Defendant engaged in one or more unlawful practices in
12 violation of the above state statutes. Defendant's misrepresentations and omissions
13 regarding the inherently defective and unreasonably dangerous nature of the
14 Confectionery Products were disseminated to Plaintiff and each other class member
15 as set forth in this sub-section in a uniform manner. Defendant sold Confectionery
16 Products that it expressly warranted were manufactured and tested properly and did
17 not contain any undisclosed impurities, substances, or risks. This includes statements
18 in the product labeling and packaging that described the product as safe without
19 disclosing the presence or levels of PFAS or fluorine.

20 113. Defendant's conduct as alleged herein constitutes unfair, deceptive,
21 misleading, or otherwise actionable practices as to Defendant's conduct concerning
22 the ingredients and safety profile for the Confectionery Products. Defendant promised
23 a safe product, but the products were not as promised because their actual safety
24 profile was not the same as that represented and bargained for.

25 114. To the extent applicable, Defendant knew, intended, or should have
26 known that its fraudulent and deceptive acts, omissions, or concealment would induce
27 reliance and that reliance can be presumed under the circumstances. As a direct and
28 proximate result of Defendant's unfair methods of competition and unfair or deceptive

1 acts or practices, Plaintiff and other class members have suffered damages – an
2 ascertainable loss – in an amount to be proved at trial.

3 115. Defendant engaged in unlawful conduct by deliberately and knowingly
4 engaging in misleading, deceptive, and false statements regarding the Confectionery
5 Products in the course of Defendant’s business. Specifically, Defendant represented
6 that the Confectionery Products were safe and did not carry any undisclosed risks.
7 But this was not the case, as the products carried health risks that were not disclosed.
8 Defendant made these misrepresentations, or omitted material information, in its
9 marketing the Confectionery Products, and in the Products’ packaging, labeling, and
10 other materials.

11 116. The existence of undisclosed risks would have been material to Plaintiff
12 and other class members.

13 117. Plaintiff and other class members suffered ascertainable loss and actual
14 damages as a direct and proximate result of Defendant’s concealment,
15 misrepresentations, and/or failure to disclose material information in that Plaintiff and
16 other class members would not have purchased the Confectionery Products, or,
17 alternatively, would not have purchased on the same terms (e.g., purchased them for
18 substantially less), had they known the truth. In the further alternative, Plaintiff and
19 each other class member would purchase the Confectionery Products in the future
20 provided the PFAS and/or fluorine is eliminated from the products or their wrappers.

21 118. Although Plaintiff does not seek to recover for physical injuries, the
22 Confectionery Products carried undisclosed risks and resulted in physical impact to
23 Plaintiff and other class members, including unbargained for, undisclosed sub-cellular
24 or structural impact on Plaintiff’s and each other class member’s body.

25 119. To the extent applicable, pre-suit notice and/or a demand letter was sent
26 to Defendant prior to the filing of the Complaint.

27 **COUNT VI – NEGLIGENCE**
28

1 120. Plaintiff alleges this claim for relief on behalf of themselves and all
2 similarly situated class members, both those in California and those in other states,
3 the laws of which do not conflict with California law.

4 121. Plaintiff incorporates the allegations in above paragraph as though fully
5 set forth herein.

6 122. Defendant owed a duty to Plaintiff and each other class member to ensure
7 its Confectionery Products were safe, were manufactured properly, were tested
8 properly, and did not contain any undisclosed impurities, substances, or risks.

9 123. Defendant owed a duty to Plaintiff and each other class member because
10 the latter were foreseeable, reasonable, and probably users of Confectionery Products,
11 and victims of Defendant's deceptive and wrongful conduct. Defendant knew, or
12 should have known, that its Coal Tar Shampoo Products were not safe, were not
13 manufactured properly, were not tested properly, and contained undisclosed risks.

14 124. Defendant inadequately oversaw its own manufacture, distribution,
15 marketing, and sale of its Confectionery Products, resulting in the Confectionery
16 Products being sold to consumers without disclosure of the true character of the
17 product.

18 125. Defendant maintained or should have maintained a special relationship
19 with Plaintiff and each other class member, who were anticipated or intended direct
20 and intended third-party beneficiaries, as it was obligated to ensure that its
21 Confectionery Products were safe, were manufactured properly, were tested properly,
22 and did not contain any undisclosed risks.

23 126. Defendant's own actions and inactions created a foreseeable risk of harm
24 to Plaintiff and each other class member.

25 127. Defendant breached duties owed to Plaintiff and each other class
26 member by failing to exercise reasonable care sufficient to protect the interests and
27 meet the needs of Plaintiff and each other class member.
28

1 128. Defendant's conduct constitutes negligence per se given the FDA's ban
2 on PFAs and/or fluorine in food product wrappers, and analogous state bans.

3 129. Although Plaintiff does not seek to recover for physical injuries, the
4 Confectionery Products carried undisclosed risks and resulted in physical impact to
5 Plaintiff and other class members, including unbargained for, undisclosed sub-cellular
6 or structural impact on Plaintiff's and each other class member's body.

7 130. As a direct and proximate result of Defendant's negligent conduct,
8 Plaintiff and each other class member suffered injury and are entitled to damages in
9 an amount to be proven at trial.

10 **COUNT VII – UNJUST ENRICHMENT**

11 131. Plaintiff alleges this claim for relief on behalf of themselves and all
12 similarly situated class members, both those in California and those in other states,
13 the laws of which do not conflict with California law.

14 132. Plaintiff incorporates the allegations in above paragraphs as though fully
15 set forth herein.

16 133. Defendant was unjustly enriched at the expense of Plaintiff and each
17 other class member by virtue of their paying for Defendant's Confectionery Products.
18 Plaintiff and each other class member conferred a direct benefit on Defendant by
19 purchasing Defendant's Confectionery Products either directly from Defendant or
20 through a reseller.

21 134. Defendant profited immensely from selling the Confectionery Products
22 that carried undisclosed risks, that were not manufactured properly, and that were not
23 tested properly.

24 135. Plaintiff and each other class member were unjustly deprived of money
25 obtained by Defendant as a result of the improper amounts paid for Confectionery
26 Products. It would be inequitable and unconscionable for Defendant to retain the
27 profit, benefit, and other compensation obtained from Plaintiff and each other class
28 member as a result of Defendant's wrongful conduct alleged.

1 136. In the alternative to the other causes of actions alleged herein, Plaintiff
2 and each other class member have no adequate remedy at law.

3 137. Although Plaintiff does not seek to recover for physical injuries,
4 Confectionery Products carried undisclosed risks and resulted

5 138. in physical impact to Plaintiff and other class members, including
6 unbargained for, undisclosed sub-cellular or structural impact on Plaintiff's and each
7 other class member's body.

8 139. Plaintiff and each other class member are entitled to seek and do seek
9 restitution from Defendant as well as an order from this Court requiring disgorgement
10 of all profits, benefits, and other compensation obtained by Defendant by virtue of its
11 wrongful conduct.

12 **PRAYER FOR RELIEF**

13 For these reasons, Plaintiffs prays for the following judgment:

- 14 i. An order certifying this action as a class action;
- 15 ii. An order appointing Plaintiffs as Class Representative, and appointing
16 undersigned counsel as Class Counsel to represent the Class;
- 17 iii. A declaration that Defendant is liable under each and every one of the
18 above-enumerated causes of action;
- 19 iv. An order awarding appropriate preliminary and/or final declaratory and
20 injunctive relief against the conduct of Defendant described above,
21 including but not limited to (in addition or in alternative to other damages
22 sought) corrective labeling and/or corrective practices to not use PFAs
23 and/or fluorine as to the Confectionery Products;
- 24 v. Payment to Plaintiffs and Class Members of all damages, exemplary or
25 punitive damages, and/or restitution associated with the conduct for all
26 causes of action in an amount to be proven at trial, including but not
27 limited to the full amounts paid for the Confectionery Products or,
28 alternative, an amount less than the full amounts paid for the

- 1 Confectionery Products that justly compensates for the depreciation in
2 value as a result of Defendant's wrongful conduct;
- 3 vi. An award of attorneys' fees, expert witness fees, and costs, as provided
4 by applicable law or as would be reasonable from any recovery of monies
5 recovered for or benefits bestowed on the Class Members;
- 6 vii. An award of statutory penalties to the extent available;
- 7 viii. Interest as provided by law, including but not limited to pre-judgment
8 and post-judgment interest as provided by rule or statute; and
- 9 ix. Such other and further relief as this Court may deem just, equitable, or
10 proper.

11 **JURY DEMAND**

12 Plaintiffs respectfully request a trial by jury on all causes of action so triable.

13
14
15 DATED: October 31, 2024

Respectfully submitted,

KANNER & WHITELEY, L.L.C.

16 By: /s/ Allan Kanner
17 Allan Kanner

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**CLRA VENUE DECLARATION PURSUANT TO
CALIFORNIA CIVIL CODE SECTION 1780(D)**

I, Alan Kanner, declare as follows:

1. I am counsel for Plaintiffs, and I am a partner at Kanner & Whiteley, L.L.C. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. The complaint filed in this action is filed in the proper place for trial because many of the acts and transactions giving rise to this action occurred in this District, and because Plaintiff resides in this District.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct, executed on October 31, 2024, at New Orleans, Louisiana.

/s/ Allan Kanner

Allan Kanner